IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1016 of 1993

1. Ramu Servai (died)
2. Meenal
3. Mahalakshmi
(appellants 2 and 3 are brought on
record as LRs of the deceased 1st
appellant vide order in CMP
9213/93 dated 30.7.1993) .. Appellants

-Vs-

1. Mandhachi
2. Muniammal
3. Poochi .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 30.9.1992 made in A.S.No.71 of 1989 on the file of the Court of Subordinate Judge, Sivaganga, confirming the judgment and decree dated 27.10.1988 made in O.S. No.335 of 1984 on the file of the Court of the District Munsif, Sivaganga.

!For Appellants : Mr.K.Lavan
for Mr.E.M.Surdhana Naichayappa

^For Respondents : No appearance

:JUDGMENT

The unsuccessful plaintiff before the Courts below in a suit for permanent injunction is the first appellant herein. Since the first appellant died, his legal representatives were added as appellants 2 and 3.

2. The plaintiff filed the suit, seeking permanent injunction to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the plaint Schedule mentioned trees, situated on the northern ridge of Survey Nos.362/2, 362/12 and 362/3, alleging that the punja lands in Survey Nos.362/2 and 362/12 belonged to the plaintiff, while the lands in Survey No.362/11 belonged to his wife Meenal; that they have been in enjoyment of the property in the past for a long time; that on the four ridges of those lands, there are lot of trees; that they have been enjoying the same also; that on the northern ridge of Survey Nos.362/2, 362/11 and

362/12, the defendant has purchased the field in Survey No.362/13 and has been enjoying the same all along; that neither the defendant nor his predecessor-intitle has got any right over the same; that while so, the defendant was attempting to cut the trees, and hence, the plaintiff was compelled to file the suit.

3. The suit was resisted by the defendant, stating that the plaint Schedule mentioned trees belonged to the defendant by way of purchase; that actually they did not belong to the plaintiff; that the defendant purchased the land in Survey No.362/13 from his predecessor-intitle on 9.5.66 under a registered sale deed; that subsequently, he planted the trees and brought them up, and thus, there is no question of plaintiff claiming any title over the same, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and dismissed the same. An appeal by the plaintiff also met the same fate before the first appellate Court. Hence, this second appeal has been brought forth by the defeated plaintiff before the Courts below.

5. At the time of admission, the following substantial questions of law were formulated for consideration: (1) Whether a decree for permanent injunction be passed without locating actual area owned by the respective parties to the suit and in the absence of prayer for declaration? (2) Whether the ready acceptance by the lower appellate Court, of the measurements and report of the Commissioner without finding and locating the actual areas owned by both the parties and then being correlated to sale deed, is legal and proper?

6. This Court heard the learned Counsel for the appellants. There was no representation for the respondent, despite service. In the absence of any merit in this appeal, this Court has to necessarily dismiss the same.

7. The specific case of the plaintiff was that the trees namely 14 palmara trees, 16 neem trees and 1 manjanathi tree situated on the northern ridge of Survey Nos.362/2, 362/12 and 262/3 belonged to him. Both the Courts below have pointed out that there is lot of inconsistencies in the description of property and the evidence adduced before the trial Court through P.W.1. According to the plaintiff, the field in Survey No.362/11 belonged to his wife one Meenal; but, this was not mentioned in the Schedule of properties, and the landed properties mentioned therein did not contain either the measurement or the four boundaries. From the available evidence, it would be abundantly clear that Survey Nos.362/3 and 362/13 were in no way connected to each other. An Advocate Commissioner was appointed by the Court, whose report and plan were marked as Exs.C1 and C2 respectively. From the Commissioner's report, it was quite evident that some of the trees were situated in Survey No.362/13, while the other trees were situated in Survey No.362/2. Thus, it would go to show that all the trees in respect of which the plaintiff claimed ownership, did not situate or they were found within the plaint mentioned survey numbers namely 362/2 , 362/12 and 362/3. The trial Court has clearly pointed out that

under the circumstances, the plaintiff should have sought for a declaration specifically stating which trees belonged to him; but, he has not done so, and in such circumstances, it was not a fit case for granting permanent injunction. The first appellate Court has also agreed with the view taken by the trial Court and rightly too. This Court is unable to see any reason to disturb the concurrent findings of the Courts below. Hence, this second appeal has got to be dismissed. However, taking into consideration the facts and circumstances of the case, liberty has got to be given to the plaintiff to file a suit for declaration. Accordingly, liberty is given.

8. In the result, this second appeal is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

To:
1. The Subordinate Judge Sivaganga
2. The District Munsif Sivaganga
3. The Record Keeper V.R. Section High Court, Madras.

nsv/